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(2023) 01 NCLT CK 0008

In the National Company Law Tribunal

Case No : C.A(CAA)/196/MB-I/2022

Rubber Products Limited Vs

Date of Decision : 06-01-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 01 NCLT CK 0008

Hon'ble Judges : P. N. Deshmukh, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah & Co

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of THE RUBBER PRODUCTS LIMITED, the Transferor Company with MAX SPARE LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

2. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 9th June, 2022 for the Transferor Company and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2022.

3. The rationale for the proposed Scheme is as under:

(a) With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of Transferor Company with Transferee Company. The amalgamation of all undertaking of Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable

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effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same Management and thus lead to reduction in administration efforts.

(b) It would be advantageous to combine the activities and operations of both the Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance.

(c) Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances. The Scheme of amalgamation will result in cost saving for both the Companies and is expected to result in administrative efficiency and higher profitability levels for the Transferee Company.

4. The authorized share Capital of the Applicant Company No.1 is Rs. 10,00,00,000/- (1,00,00,000 Equity shares of Rs. 10/- each) and Issued, Subscribed and Paid-up Rs. 4,08,84,000/-(40,88,400 Equity shares of Rs. 10/- each). That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of THE RUBBER PRODUCTS LIMITED, the Transferor Company with MAX SPARE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the seven Equity Shareholders of the Applicant Company No.1, which are annexed as 'Exhibit I-1 to I-7' to the Company Scheme Application.

5. The authorized share Capital of the Applicant Company No.2 is Rs. 5,00,00,000/- (5,00,000 Equity shares of Rs. 100/- each) and Issued, Subscribed and Paid-up Rs. 4,95,60,000/- (4,95,600 Equity shares of Rs. 100/- each). That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of THE RUBBER PRODUCTS LIMITED, the Transferor Company with MAX SPARE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the seven Equity Shareholders of the Applicant Company No.2, which are annexed as 'Exhibit J-1 to J-7' to the Company Scheme Application.

6. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 1 mentioned in Para 23 of the Application.

7. That there are 5 (Five) secured Creditors having value of Rs. 98,88,73,297/- (Rupees Ninety-Eight Crore Eighty-Eight Lacs Seventy Three Thousand Two Hundred and Ninety Seven only). That Counsel for the Applicant Company No. 2

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submits that since the scheme is an arrangement between the Applicant Company No.2 and their respective shareholders in accordance with the provisions of the Companies Act, 2013. This bench hereby directs the Applicant Company No.2 to issue notice to its Secured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

8. That there are 14 (Fourteen) Unsecured Creditor having value of Rs. 17,77,09,482/- (Rupees Seventeen Crore Seventy-Seven Lacs Nine Thousand Four Hundred and Eight Two only). The Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

9. That there are 102 (One Hundred Two) Unsecured Creditor having value of Rs.28,92,75,473/- (Rupees Twenty-Eight Crore Ninety Two Lakh Seventy Five Thousand Four Hundred and Sevety Three only). The Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

10. The Consideration is that Upon the Scheme becoming finally effective, in

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consideration of the transfer and vesting of the Undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, the Transferee Company shall subject to the provisions of the Scheme and without any further application or deed, Issue and allot 1 (One) Equity Shares of Rs.100/- (Rupees Hundred) each, credited as fully paid-up in the capital of the Transferee Company to the Equity Shareholders of the Transferor Company whose names appear in the Register of Members, on a record date to be fixed by the Board of the Transferee Company, for every 514 Five Hundred Fourteen) Equity Share of the face value of Rs.10/- (Rupees Ten) each held by the Shareholders of the Transferor Company.

11. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

12. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

13. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The Applicant Company No. 1 PAN: AAACT5142P having his address at The Income Tax Officer, CIRCLE 3, Qureshi Mansion, Gokhale Road, Naupada, Thane (West), Thane - 400602 and The Applicant Company No. 2 PAN: AADCS6349E having his address at The Income Tax Officer, DCIT 4(3)(1), Aaykar Bhawan, Mumbai-400020. The Applicant Company’s assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

14. The Applicant Companies to serve the notice upon the Goods and Service Tax (GST) Department, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director

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within 30 days of the date of receipt of the notice it will be presumed that Goods and Service Tax (GST) Department has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Transferor Company are also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last 5 years and submit its representation to the Tribunal. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

17. The Appointed Date is 1st April, 2022

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